I am not unmindful of the fact that in that case the Privy Council were dealing with a case from India where the law may to some extent differ from the English law and also that they were dealing with land inundated by a river and not by the sea. Similar considerations apply to the cases of *Lopez v. Muddun Mohun Thakoor & ors*[13]; *Ramanath Thakoor & ors. v. Chundernarain Chowdhry*[14] (set out in a footnote to the report of *Lopez's*[13] case); and the *Collector of Rajshahye v. Ranee Shama Boonduree Debia & ors.*[15] upon which Mr. Hume relied. Nevertheless I think the judgments in all these cases can be taken as indicating that the considerations which may apply to alluvial land in the sense of land gradually gained from the water do not apply to lands in the possession of an owner which are first inundated and subsequently left dry; and that the original owner recovers his property in the latter circumstances.

The first branch of Federal Counsel's contention is that adopted by the Collector of Land Revenue in reaching his decision. It is that as the foreshore advanced the land vested in the Crown and therefore now remains the property of the Crown. No authority was cited in support of this proposition which appears to rest solely upon the Common Law right of the Crown to the foreshore. There is no doubt of the ownership by the Crown of the foreshore, and if anything had been built upon or works carried out on any part of the land in question whilst it was foreshore different considerations might have arisen. This however, has not happened. The foreshore which belongs to the Crown is a constantly shifting strip of land the boundaries of which, in places where the sea periodically advances and recedes over the years cannot be easily ascertained. It appears to me that if, as the sea advances, the advancing foreshore becomes the property of the Crown so the extent of that property remains limited by the dormant rights of the original owner, which will revive if and when the land subsequently becomes uncovered.

Mr. Hume on behalf of the applicant drew my attention to certain misdirections of fact disclosed in the written decision given by the Collector of Land Revenue, but I do not think it necessary to go into these, except to remark that he was clearly wrong in looking upon 1935, the year when the applicant bought the equity of redemption, as being a date of any importance, because the applicant had acquired the legal estate in the land by virtue of the Mortgage Deed of the 18th August, 1932.

I have come to the conclusion that the owner of land which becomes gradually and imperceptibly covered by the sea is entitled to regain possession of it if it subsequently becomes left high and dry by gradual recession of the water; and that just as a proprietor may lose his enjoyment of the land by the gradual advance of the sea, so the Crown may also lose the use of the foreshore originally acquired by the gradual recession of the sea.

There is thus a clear error in law on the face of the written decision given by the Collector of Land Revenue in this case, and there will, therefore, be an order that that decision be removed into this Court and quashed.

Order accordingly.

Solicitors for the applicant: *Hogan, Adams & Allan.*

TAN AH CHAN v. REGINA

[A. Cr. J. (Spenser Wilkinson J.) August 27, 1955]

[Penang — Criminal Appeal No. 27 of 1955]

Criminal Procedure Code (Cap. 21), s. 187 — Withdrawal of charges by prosecution — Whether Court should order the discharge to amount to an acquittal.

Unless good cause is otherwise shown the Court should order a discharge under s. 187 of the Criminal Procedure Code (Cap. 21) to amount to an acquittal.

Cases referred to:—

(1) *Public Prosecutor v. Suppiah Pather* Criminal Revision No. 14 of 1951 — unreported.

(2) *Public Prosecutor v. Mat Zain* (1949) M.L.J. 147; (1948-49) M.L.J. Supp.

(3) *Goh Oon Keow & anor v. Rex* (1949) M.L.J. 35.

(4) *Seet Ah Ann v. Public Prosecutor* (1950) M.L.J. 293; 1 M.L.R. 242.

MAGISTRATE'S CRIMINAL APPEAL.

Jag-Jit Singh for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J.: — The appellant was charged in the Sessions Court with three charges of criminal intimidation under section 506 of the Penal Code. Subsequently the charges were withdrawn by the Deputy Public Prosecutor under the provisions of section 187 of the Criminal Procedure Code, and the learned President discharged the appellant of and from the charges but did not order that such discharge should amount to an acquittal.

It would appear that although the appellant was represented by Counsel the attention of the learned President was not drawn to the numerous decisions of

the Courts in this country to the effect that unless good cause is otherwise shown a discharge under this section should amount to an acquittal.

My decision to this effect in *Public Prosecutor v. Suppiah Pather*[1] does not appear to have been reported, but in that case I made reference to the three following reported cases *Public Prosecutor v. Mat Zain bin Yahaya*[2]; *Goh Oon Keow & anor. v. Rex*[3] and *Seet Ah Ann v. Public Prosecutor*[4].

In addition to these reported cases there are numerous cases in which, acting in revision, I have altered orders from a simple discharge to discharges amounting to an acquittal.

Following all these decided cases, I therefore vary the order made by the learned President in this case, and substitute therefor an order that the appellant be discharged of and from the charges, such discharge amounting to an acquittal.

Appeal allowed.

LIM KWAN KEE v. KWAN SEE (m.w.)

[A. C. J. (Wilson J.) August 29, 1955]

[K. L.—Civil Appeal No. 17 of 1955]

Administrator—Claim for agreed share in estate of deceased—Whether the share was an annuity or not—Liability for income tax—Income Tax Ordinance.

The appellant in this case was the administrator of the estate of his deceased father. By an agreement between the appellant and the respondent, it was agreed that in consideration of the respondent agreeing to Letters of Administration to be granted to the appellant, the respondent should be entitled to 1/6 share in the estate of the deceased. The estate of the deceased was entitled to a tribute and the appellant duly paid the respondent her 1/6 share of the tribute up to February 1954. The respondent sued the appellant for the sum of $566.04 in respect of the tribute received by the appellant for the months of March to June 1954. The appellant claimed that he had paid income tax on the tribute paid by him to the respondent during the years 1952 and 1953 and he claimed to set off the sum of $782 which he had paid for income tax. It was argued that the 1/6 share of the respondent was an annuity and therefore the income tax was payable by her. The learned Magistrate held that the share was not an annuity and gave judgment for the respondent.

Held: the learned Magistrate was right in holding that the payment made to the respondent did not constitute an annuity and therefore the appeal must be dismissed.

Cases referred to:—

(1) *Brooke v. Price* (1917) A.C. 115.

(2) *In re Shaw; Smith v. Shaw* (1916) P. 47.

(3) *In re Janes' Settlement; Wasmuth v. Janes* (1918) 2 Ch. 54.

MAGISTRATE'S CIVIL APPEAL.

Bentley for the appellant.

P. G. Lim (Miss) for the respondent.

Cur. Adv. Vult.

Wilson J. : —The appellant was the only son and sole beneficiary of Lim Song at the date of his death and, indeed, in the statement of defence he claims to be the sole beneficiary and to be entitled to the tribute payable to the estate of the deceased father. The deceased died on the 26th June, 1941 and by an agreement in writing dated the 24th July, 1941 between the appellant and the respondent it is recited that the appellant denied that the respondent was the lawful widow of the deceased. It seems to me obvious that the respondent was claiming to be the lawful widow of the deceased. No evidence as to this was called at the trial, and in any case it seems to me to be immaterial as she certainly is not a beneficiary of the estate of the deceased. Prior to the date of the agreement the respondent had entered a caveat in the proceedings by which the appellant applied for letters of administration of the estate of the deceased father. In the agreement it was provided that the respondent should withdraw her caveat and agree to letters of administration being granted to the appellant. In return it was stated that the respondent should be entitled to one-sixth share in the estate of the deceased. It is to be noted that at the time of the agreement there was no provision in the laws of Malaya for the payment of income tax. Up to and including the month of February, 1954, the appellant paid to the respondent the one-sixth share of the tribute payable to her under the terms of the agreement. The respondent sued the appellant for the sum of $566.04 in respect of the tribute received by the appellant for the months of March to June, 1954. This was not disputed by the appellant who, however, claimed that he had paid income tax on the tribute paid by him to the respondent during the years 1952 and 1953. The appellant claimed that the amount of income tax so paid on such tribute amounted to $782, and he claimed to set off the sum of $782 against the sum claimed in the action by the respondent.

The sole question for decision in this case is whether such income tax is payable by the appellant or the respondent. It has been argued before me and before the Court below that the one-sixth share of the respondent was an annuity. In support of this contention I have been referred to *Brooke v. Price*[1]. In my opinion that was an entirely different case inasmuch as the payment under consideration therein was the payment of an annual specific sum. That in this case payments were to be made monthly, it seems to me